

“(B) submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the results of the evaluation.”

“(6) FUNDING.—

“(A) IN GENERAL.—On October 1, 2002, and on each October 1 thereafter through October 1, 2007, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection \$10,000,000, to remain available until expended.”

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.”

**TITLE II—SCHOOL BREAKFAST AND RELATED PROGRAMS**

**SEC. 201. STATE ADMINISTRATIVE EXPENSES.**

(a) MINIMUM AMOUNT.—Section 7(a)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(2)) is amended by striking the last sentence and inserting the following: “In no case shall the grant available to any State under this subsection be less than \$200,000, as adjusted in accordance with section 11(a)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)).”

(b) EXTENSION.—Section 7(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(g)) is amended by striking “2003” and inserting “2008”.

**SEC. 202. SPECIAL SUPPLEMENTAL PROGRAM FOR WOMEN, INFANTS AND CHILDREN.**

(a) SENSE OF CONGRESS ON FULL FUNDING FOR WIC.—It is the sense of Congress that the special supplemental nutrition program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) should be fully funded for fiscal year 2004 and each subsequent fiscal year so that all eligible participants for the program will be permitted to participate at the full level of participation for individuals in their category, in accordance with regulations promulgated by the Secretary of Agriculture.

(b) REAUTHORIZATION OF PROGRAM.—Section 17(g)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(1)) is amended in the first sentence by striking “2003” and inserting “2008”.

(c) NUTRITION SERVICES AND ADMINISTRATION FUNDS.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended—

(1) in paragraph (2)(A), by striking “2003” and inserting “2008”; and

(2) in paragraph (10)(A), by striking “2003” and inserting “2008”.

(d) FARMERS’ MARKET NUTRITION PROGRAM.—Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)) is amended—

(1) in paragraph (1), by striking “(m)(1) Subject” and all that follows through “the Secretary” and inserting the following:

“(m) FARMERS’ MARKET NUTRITION PROGRAM.—

“(1) IN GENERAL.—The Secretary”;

(2) in paragraph (6)(B)—

(A) by striking “(B)(i) Subject to the availability of appropriations, if” and inserting the following:

“(B) MINIMUM AMOUNT.—If”;

(B) by striking clause (ii); and

(3) in paragraph (9), by striking “(9)(A)” and all that follows through the end of subparagraph (A) and inserting the following:

“(9) FUNDING.—

“(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to

the Secretary of Agriculture to carry out this subsection—

“(i) on October 1, 2003, \$25,000,000;

“(ii) on October 1, 2004, \$29,000,000;

“(iii) on October 1, 2005, \$33,000,000;

“(iv) on October 1, 2006, \$37,000,000; and

“(v) on October 1, 2007, \$41,000,000.”

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.”

“(C) AVAILABILITY OF FUNDS.—Funds transferred under subparagraph (A) shall remain available until expended.”

**SEC. 203. NUTRITION EDUCATION AND TRAINING.**

Section 19(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1788 (i)) is amended by striking “(i) AUTHORIZATION OF APPROPRIATIONS.—” and all that follows through the end of paragraph (1) and inserting the following:

“(i) FUNDING.—

“(1) PAYMENTS.—

“(A) IN GENERAL.—On October 1, 2003, and on each October 1 thereafter through October 1, 2007, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this section \$27,000,000, to remain available until expended.”

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under subparagraph (A), without further appropriation.”

“(2) GRANTS.—

“(A) IN GENERAL.—Grants to each State from the amounts made available under subparagraph (A) shall be based on a rate of 50 cents for each child enrolled in schools or institutions within the State.”

“(B) MINIMUM AMOUNT.—The minimum amount of a grant provided to a State for a fiscal year under this section shall be \$200,000, as adjusted in accordance with section 11(a)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)).”

**TITLE III—EFFECTIVE DATE**

**SEC. 301. EFFECTIVE DATE.**

This Act and the amendments made by this Act take effect on October 1, 2003.

**McCAIN-FEINGOLD CAMPAIGN FINANCE LAW**

Mr. FEINGOLD. Mr. President, at 3:45 p.m. on Friday afternoon, a three-judge panel of the United States District Court for the District of Columbia released a long-awaited decision in the case of *McConnell v. FEC*. That is the lawsuit challenging the constitutionality of the Bipartisan Campaign Reform Act of 2002, sometimes known as the McCain-Feingold bill.

Over 80 different plaintiffs participated in the case, which was defended by the Department of Justice and the Federal Election Commission. Six congressional sponsors of the law, Senator JOHN MCCAIN, Senator OLYMPIA SNOWE, Senator JAMES JEFFORDS, Representative CHRISTOPHER SHAYS, Representative MARTY MEEHAN, and I, intervened as defendants in the case.

A number of commentators and lawyers for the parties have commented that the most important aspect of this decision is that it has finally come down. I agree with that. From the very beginning of our effort to reform the

campaign laws over a period of 7 years, we knew that the Supreme Court of the United States would decide the fate of the law. We provided for expedited consideration of any challenge to the law's constitutionality by having a three-judge panel hear the case as the trial court with a direct appeal to the Supreme Court.

Discovery and briefing in the case proceeded on a very fast track, and the court heard oral argument on December 4, 2002, an argument which I had a chance to attend in part. At that argument, the chief judge of the panel suggested that the panel would rule by the end of January. It took considerably longer than that, and now we know why. On Friday, the court released over 1,600 pages of opinions. A shifting majority among the three judges upheld some of the most important portions of the law while it struck down some others.

Now that the three-judge panel has finally ruled, the Supreme Court can take the case and begin its consideration of the constitutional issues raised by the law. I hope the Court will act quickly, but I also hope it will act carefully and judiciously as, of course, we assume it will. The decision of the Court will shape the conduct of elections and fundraising in this country for many years to come.

While the district court opinion will become a mere footnote to history once the Supreme Court rules, I believe it is useful to comment on the decision today because the press coverage of the details of the ruling has been sometimes contradictory, and unfortunately in a number of cases the press reports were simply inaccurate about what had happened with the court decision. This is not surprising given the complexity of the ruling and the length of the opinions. For the benefit of my colleagues, particularly those who supported our long effort to pass reform, I wanted to discuss today what the court did and did not do.

The court's ruling was shaped by two different 2-1 majorities. U.S. Circuit Judge Karen Henderson would have struck down much of the law, while U.S. District Judge Colleen Kollar-Kotelly would have upheld most of it. The deciding vote in most cases was U.S. District Judge Richard Leon, who sided with Judge Henderson on some issues and with Judge Kollar-Kotelly on others. The three judges were unanimous on a handful of issues, mostly on some of the minor provisions in the bill, but also on one very significant portion of the soft money ban.

Let me start with soft money, especially in light of the headlines that screamed “soft money ban struck down.” Those headlines were not correct.

Let me start with soft money, which was the core of the reform effort and was dealt with in title I of the McCain-Feingold bill.

The court struck down our prohibition on national parties raising soft

money. Under this ruling, national party committees may again raise unlimited contributions from unions, corporations, and wealthy individuals. That, of course, assumes that the Supreme Court agrees with this point, which frankly I believe they will not. State parties were never prohibited from raising such money under McCain-Feingold. Each State's fundraising activities are governed by State law. That is quite key to understanding exactly what happened by the ruling.

The court left intact, however, the prohibition on the national parties spending soft money on public communications, such as broadcast advertising, television ads, that promotes, supports, attacks, or opposes a Federal candidate. Over the past four election cycles, dating back to the 1996 campaign, both Federal and State parties have spent millions upon millions of dollars of soft money on television ads attacking candidates of the other party.

Frankly, it was this practice, the use of soft money for television ads, that more than anything else drove Senator McCain and I, and the other authors and supporters of the bill, to work so hard for 7 years.

This court, this district court, upheld the ban on ads being paid for by soft money.

The so-called issue ads are the biggest end run around the campaign finance laws out there, and they were the core of what McCain-Feingold is trying to stop. I am pleased to say the district court upheld our efforts in that area.

Under this ruling, party committees can raise soft money but they cannot spend it on all those phony issue ads you see on television all throughout the campaigns and about which so many people have complained. They can spend it, however, under this rule, on other activities that Congress determined in BCRA had a significant effect on Federal elections, such as voter registration drives conducted near in time to Federal elections and voter identification and voter registration efforts.

In upholding the prohibitions on the parties spending soft money to finance election-related advertising, I firmly believe the basic principle of McCain-Feingold was upheld. The court recognized the corrupting effect of this money and the power of Congress to regulate it when it affects Federal elections. That is a significant finding.

Note that the court did not find that the first amendment or free speech rulings or practices restrict or prevent a complete ban on ads paid for by soft money. That was the biggest issue out here in the debate over 7 years, and even this district court agreed with that fundamental principle of McCain-Feingold.

When the case goes to the Supreme Court, congressional supporters of the law and the United States will urge the Court to recognize that the corrupting

effect of soft money on our political process is not eliminated by simply restricting its use to so-called party-building activities. So there is no question, we hope for an even stronger ruling from the Supreme Court. Furthermore, there is ample evidence, we believe, that the kinds of activities the district court determined can still be financed with soft money do, in fact, have a major impact on Federal elections.

The same 2-to-1 majority that struck down the ban on national parties raising soft money also held unconstitutional the prohibition of parties raising soft money for or transferring soft money to advocacy groups. The other 2-to-1 majority upheld the prohibition on State candidates spending money on advertisements that mention Federal candidates and promote, support, attack, or oppose these candidates.

Again, not only did the court say that at the Federal level the parties could not buy soft money TV ads, but also the State parties cannot run ads on behalf of Federal candidates using soft money—again, very different from what you might have assumed had you been watching CNN late Friday afternoon.

All three judges, however—and I think this is very significant—uphold the crucial portion of the new law that simply prohibits Federal officeholders and candidates from raising and spending soft money. This is a significant blow to those who wanted to believe when they first heard about this decision that it had somehow restored the status quo of political fundraising and campaign spending in this country.

Even Judge Henderson, who ruled against our side on virtually every other matter, rejected most of the new justifications of the new law offered by its proponents. Even she recognized the fact that there is an appearance of corruption created when Members of Congress or other Federal officials seek to raise huge donations from corporations, unions, or wealthy individuals. She upheld this provision under the highest standard of review, strict scrutiny.

Today, just like last Thursday, it is still against the law—a criminal violation—for a Member of Congress to call up a union, an individual, or a corporate entity and ask for unlimited campaign contributions. It cannot be done today any more than it could have been done a few days ago.

It is important to know that the provision of the law upheld in this part of the court's opinion includes a prohibition not only on Members themselves doing this, raising soft money for purposes of broadcast, but also on entities directly or indirectly established, financed, maintained, or controlled by Federal candidates or officeholders. As a matter of fact, this is a complete prohibition on soft money fundraising by these entities.

I misspoke a minute ago saying it only related to broadcast. This prohibi-

tion on Federal officeholders and entities directly or indirectly established by them relates to any kind of fundraising for any kind of soft money whatever. Therefore, leadership PACs maintained by Members of Congress may still not raise soft money under this ruling; nor can the congressional campaign committees which are clearly established and controlled by Members of Congress to aid the reelection efforts of themselves and their colleagues.

Now, unfortunately the former head of one such committee quickly announced he would begin raising soft money immediately anyway. He might want to get some legal advice first. Although the soft money portion of the court's ruling certainly changes much in the political fundraising landscape, it leaves one very important part of the new regime imposed by the McCain-Feingold bill: Members of Congress and the executive branch must stay out of the soft money game altogether. Especially in this period of uncertainty between now and when the Supreme Court issues its decision, the spectacle of Members of Congress getting out their old soft money Rolodexes and dialing for dollars again would be more than the American people would stand.

So I am not only very pleased but relieved that the district court recognized the importance of stopping the part of the soft money system that some of us have referred to as legalized extortion or legalized bribery or, more directly, simply a shakedown.

Title II of the McCain-Feingold bill dealt with what we called electioneering communications, the phony issue ads by outside groups that commanded so much attention during the last few election cycles. Here again, the court was divided. It did strike down the primary definition of electioneering communications we had referred to on the floor as the bright line test. Actually, we also referred to it as the Snowe-Jeffords provision. Under that formulation, an ad that ran within 60 days of a general election or 30 days of a primary could be financed only with hard money; that is, only through a PAC set up by the company, union, or group running the ad.

Now, a majority of the district court panel believed this definition was overly broad because it would capture a substantial number of "true issue ads" as well as those aimed at electioneering.

Again, despite the initial erroneous reports, there was more to the decision than that—quite dramatically more. The court upheld a fallback definition which was originally added on the floor by Senator SPECTER during the debate in 2001. That definition uses language similar to that which we employed in the soft money ban to address phony issue ads run by the parties. So if an ad promotes, supports, attacks, or opposes a candidate, it still must be paid for with hard money. The court also

upheld the Wellstone amendment that applied this definition to ads run by advocacy groups in addition to labor unions and for-profit corporations and upheld the disclosure requirements in the law.

The definition upheld by the district court actually is not limited to a 30- or 60-day window. So at any time during the election cycle, including today, groups may not use soft money to run ads attacking candidates in this manner. This is very significant. The definition is broader and will very likely cover many more ads in the primary definition of electioneering communications that we passed. The court even threw out a clause included by Senator SPECTER to attempt to narrow the definition, declaring it made the overall definition too vague. Frankly, I don't know whether this ruling will survive when the Supreme Court rules on the case.

What is most interesting here is the majority of the court decided that Congress is not limited to regulating advertisements that use the so-called magic words of express advocacy. Year after year, opponents of McCain-Feingold said you could only limit this to the magic words, vote for or vote against. That is not true under this court's ruling, and that is a major step forward, potentially. It recognizes the Constitution is not a straitjacket leaving the Congress powerless to address clear efforts to evade the law through phony issue ads.

In our appeal to the Supreme Court, we will argue that the 30/60 provision drafted by Senators SNOWE and JEFFORDS is constitutionally defensible because it gives groups certainty over what ad is covered and what is not. But either definition is preferable to the current very narrow magic words test that allows a massive evasion of disclosure and source requirements for the attack ads that tend to dominate the airways in the weeks before an election.

The court reached decisions on a number of other provisions of the bill. A number of these decisions were unanimous, and I will not take time right now to go through each of them. I ask unanimous consent that a summary of those rulings be printed in the RECORD at the end of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. FEINGOLD. Mr. President, in the next few days a decision will be made whether to seek a stay of the district court's decision. I think the arguments for such a stay are strong. The parties have been working under the new campaign finance rules since November of last year.

To shift to another system for a few months while the Supreme Court reviews the case only to shift again when the Supreme Court rules, whatever its decision might be, does not make much sense. It would be preferable for a variety of reasons to keep things the way they are now until the Supreme Court makes a final decision. That decision

should come in plenty of time for the parties to prepare for the upcoming elections.

One of the main arguments for a stay is that in order to put the district court's decision in place, the FEC would almost certainly have to undertake a whole new set of rulemaking proceedings. The FEC worked to put implementing regulations in place in a timely manner, as instructed by the new law. Many of those regulations are not particularly useful under the law established by the district court's decision. In any event, I call on the parties to act with restraint, especially until the courts rule on any requests for a stay.

As I mentioned at the outset, we have always known that this case was headed to the Supreme Court. I am pleased that the decision of the three judge panel has come down and that the final stage of this legal process can now begin. I have great confidence in the Department of Justice and in the legal team that is representing the congressional sponsors. They did an extraordinary job in assembling a factual record and laying out the arguments for the law's constitutionality in the district court.

These lawyers are acting to defend a legislative product that reflects not only political compromise, but also great care and attention to constitutional principles and the American people's desire for a political system that is based on ideas and not money. I am proud to continue the fight for campaign finance reform in the courts, and I again thank my colleagues for their support in this long effort.

I chose to come to the floor because if anybody had read the news accounts on Friday and Saturday, frankly, they would not have any idea of what the actual effect of this ruling was which was, on balance, positive, in favor of campaign finance reform. But we do hope the U.S. Supreme Court will even go further and complete the job.

#### EXHIBIT 1

Coordination—A 2-1 majority of the court rejected challenges to the coordination provisions. It held that a challenge to the provision that requires the FEC to issue new regulations was premature.

Independent/coordinated party expenditures—By a 3-0 vote, the court struck down the provision of the bill that requires parties to choose once a candidate had been nominated between making independent or 441a(d) expenditures.

Millionaire provisions—By a 3-0 vote, the court decided that the plaintiffs lacked standing to challenge the millionaire amendments.

Stand by your ad—By a 3-0 vote, the court determined that the candidate plaintiffs do not have standing to challenge the Wyden amendment requiring candidates to personally appear in ads that attack their opponents in order to get the lowest unit rate.

Increased contribution limits—By a 3-0 vote, the court ruled that the Adams plaintiffs do not have standing to challenge the increased contributions limits.

Minors' contributions—By a 3-0 vote, the court struck down the ban on contributions by minors.

ID of sponsors—The court upheld the Durbin amendment requiring more identifying information on the identification of the sponsor or sponsors of a political ad.

Disclosure of broadcasting records—By a 3-0 vote, but for differing reasons, the court struck down the Hagel amendment requiring broadcasting stations to maintain and make publicly available records of requests to purchase political advertising time.

#### RECESS APPOINTMENT OF PETER EIDE

Mr. DURBIN. Mr. President, today I rise to share my concerns about the recess appointment of Peter Eide to fill the post of general counsel at the Federal Labor Relations Authority.

Recently, President Bush announced several recess appointments of pending nominees to fill posts in his administration. One of those appointments was granted to Peter Eide. Mr. Eide's nomination has been under active consideration by the Governmental Affairs Committee since its referral, and a public hearing to consider his appointment was held on April 10. I am disappointed that the President chose to exercise his discretion to make this recess appointment rather than allowing the advice and consent process to continue on course.

Mr. Eide's credentials would make him an impeccable candidate for any number of positions in the Federal Government. However, General Counsel at the Federal Labor Relations Authority is not one of them.

The position to which Mr. Eide was appointed is described under law as being a neutral party in the settlement of disputes that arise between Federal agencies and unions on matters outlined in the Federal Service Labor Management Relations statute. However, for the past 12 years, Mr. Eide has been an outspoken critic of labor protections on behalf of the Chamber of Commerce. He has consistently supported the dilution of protections for workers. He opposed OSHA regulations on safety and health programs, including ergonomics standards. He opposed provisions of the 1991 Civil Rights Act that provide compensatory damages and jury trials for violations of the Americans with Disabilities Act. He advocated a policy that would exempt employers who hired former welfare recipients from employment discrimination laws for 18 months. He consistently opposed increases in the Federal minimum wage. I find it disconcerting that someone who has been such a passionate and unrelenting foe of such labor protections for so many years would not only seek this position, but feel he is qualified to be the general counsel of the Federal Labor Relations Authority.

Looking beyond his former policy positions, Mr. Eide also lacks the requisite experience with Federal labor-management relations that I believe this important post necessitates. Most of his recent labor law experience has been in the private sector representing